



[Billing Code: 6750-01P]

## **FEDERAL TRADE COMMISSION**

### **16 CFR Part 423**

#### **Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods**

**AGENCY:** Federal Trade Commission.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Commission seeks comment on a proposal to repeal its trade regulation rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods as Amended (“Care Labeling Rule” or “Rule”).

**DATES:** Written comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. Parties interested in an opportunity to present views orally should submit a request to do so as explained below, and such requests must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

**INFORMATION** section below. Please write “Care Labeling Rule, 16 CFR part 423, Project No. R511915” on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “Care Labeling Rule, 16 CFR part 423, Project No. R511915” on your comment and on the envelope and mail your comment to

the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite 5610, Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex C), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Attorney, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326-2889.

**SUPPLEMENTARY INFORMATION:** The Commission finds that using streamlined procedures in this rulemaking will serve the public interest. Specifically, such procedures support the Commission's goals of clarifying, updating, or repealing existing regulations, while ensuring that the public has an opportunity to submit data, views, and arguments on whether the Commission should repeal the Rule. Because written comments should adequately present the views of all interested parties, the Commission is not scheduling a public hearing or roundtable. However, if any person would like to present views orally, he or she should follow the procedures set forth in the **DATES**, **ADDRESSES**, and **SUPPLEMENTARY INFORMATION** sections of this document. Pursuant to 16 CFR 1.20, the Commission will use the procedures set forth in this document, including: (1) publishing this Supplemental Notice of Proposed Rulemaking ("SNPRM"); (2) soliciting written comments on the Commission's proposal to repeal or amend the Rule; (3) holding an informal hearing (such as a roundtable) if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a

document published in the *Federal Register*. Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

## **I. Introduction**

The Care Labeling Rule requires manufacturers and importers of textile wearing apparel and certain piece goods to attach labels to their products disclosing the care needed for the ordinary use of the product.<sup>1</sup> The Rule also requires manufacturers or importers to possess a reasonable basis for care instructions,<sup>2</sup> and allows the use of approved care symbols in lieu of words to disclose those instructions.<sup>3</sup>

The Commission has a long history of seeking comment and considering concerns about the Rule as well as the amendments proposed by the Commission. It promulgated the Rule in 1971 and has amended it three times since.<sup>4</sup> In 1983, the Commission clarified its requirements regarding the disclosure of washing and drycleaning information.<sup>5</sup> In 1997, the Commission adopted a conditional exemption to allow the use of symbols in lieu of words.<sup>6</sup> In 2000, the Commission clarified what constitutes a reasonable basis for care instructions and revised the Rule's definitions of "cold,"

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<sup>1</sup> 16 CFR 423.5 and 423.6(a) and (b).

<sup>2</sup> 16 CFR 423.6(c).

<sup>3</sup> The Rule provides that the symbol system developed by ASTM International, formerly the American Society for Testing and Materials, and designated as ASTM Standard D5489-96c, "Guide to Care Symbols for Care Instructions on Consumer Textile Products," may be used on care labels or care instructions in lieu of terms so long as the symbols fulfill the requirements of part 423. 16 CFR 423.8(g).

<sup>4</sup> 36 FR 23883 (Dec. 16, 1971).

<sup>5</sup> 48 FR 22733 (May 20, 1983).

<sup>6</sup> 62 FR 5724 (Feb. 6, 1997).

“warm,” and “hot” water.<sup>7</sup>

In 2000, the Commission also rejected two proposed amendments. First, it declined to require marketers to provide instructions for home washing on items that one can safely wash at home. The Commission determined that the evidence was not sufficiently compelling to require such instructions and that the benefits of the proposed change were highly uncertain.<sup>8</sup> Second, the Commission decided not to establish a definition for “professional wetcleaning” or permit manufacturers to label a garment with a “Professionally Wetclean” instruction.<sup>9</sup> The Commission concluded that it was premature to allow such an instruction before the development of a suitable definition and an appropriate test method.<sup>10</sup> However, the Commission stated that it would consider such an instruction if a more specific definition and/or test procedure were developed.<sup>11</sup>

As part of its ongoing regulatory review program, the Commission published an Advance Notice of Proposed Rulemaking (“ANPR”) in July 2011 seeking comment on the economic impact of, and the continuing need for, the Rule; the benefits of the Rule to

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<sup>7</sup> 65 FR 47261 (Aug. 2, 2000).

<sup>8</sup> *Id.* at 47269.

<sup>9</sup> The Commission initially proposed a definition of professional wetcleaning, stating, in part, that it is a system of cleaning by means of equipment consisting of a computer-controlled washer and dryer, wetcleaning software, and biodegradable chemicals specifically formulated to safely wetclean wool, silk, rayon, and other natural and man-made fibers. *Id.* at 47271 n. 99.

<sup>10</sup> *Id.* at 47272. The Commission explained that the definition must either describe all important variables in the process, so that manufacturers can determine that the process would not damage the garment, or be coupled with a specific test procedure that manufacturers can use to establish a reasonable basis for the instruction. *Id.*

<sup>11</sup> *Id.* at 47273.

consumers; and any burdens the Rule places on businesses.<sup>12</sup> The ANPR also sought comment on whether and how the Rule should address professional wetcleaning and updated industry standards regarding the use of care symbols, as well as whether the Rule should provide for non-English disclosures. The Commission received 120 comments in response.<sup>13</sup>

After reviewing these comments, in September of 2012 the Commission published a Notice of Proposed Rulemaking (“NPRM”) proposing four amendments.<sup>14</sup> Specifically, it proposed: (1) permitting manufacturers and importers to provide a care instruction for professional wetcleaning on labels if the garment can be professionally wetcleaned; (2) permitting manufacturers and importers to use the symbol system set forth in either ASTM Standard D5489-07, “Standard Guide for Care Symbols for Care Instructions on Textile Products,” or ISO 3758:2005(E), “Textiles---Care labelling code using symbols”; (3) clarifying what constitutes a reasonable basis for care instructions; and (4) updating the definition of “dryclean” to reflect then-current practices and technology.<sup>15</sup> The Commission received 87 comments in response,<sup>16</sup> including one requesting an opportunity to present views orally at a workshop or hearing and several

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<sup>12</sup> 76 FR 41148 (July 13, 2011).

<sup>13</sup> The comments are posted at <http://www.ftc.gov/policy/public-comments/initiative-384>.

<sup>14</sup> 77 FR 58338 (Sept. 20, 2012).

<sup>15</sup> The Commission published the NPRM pursuant to Section 18 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 57, the provisions of Part 1, Subpart B of the Commission’s Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

<sup>16</sup> The comments are posted at <http://www.ftc.gov/policy/public-comments/initiative-451>.

suggesting that the Commission hold a hearing or workshop. Most of these comments also urged the Commission to amend the Rule to require a wetcleaning instruction rather than merely permit one. Accordingly, the Commission conducted a roundtable on March 28, 2014 to provide interested parties with an opportunity to present their views orally pursuant to the procedures set forth in the NPRM.<sup>17</sup> The Commission received 19 comments in connection with the roundtable.<sup>18</sup>

Upon consideration of the substantial record in this rulemaking, the Commission now seeks comment on a proposal to repeal the Rule altogether. As detailed in section III, the record suggests that the Rule may not be necessary to ensure manufacturers provide care instructions, may have failed to keep up with a dynamic marketplace, and may negatively affect the development of new technologies and disclosures.

This SNPRM summarizes the comments filed in response to the NPRM, as well as the roundtable and the roundtable comments, and explains the Commission's proposal. Additionally, it poses questions regarding the proposal and whether informal guidance would be helpful in the absence of the Rule. Finally, this SNPRM addresses procedural matters including communications to Commissioners and their advisors and the

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<sup>17</sup> The Commission originally scheduled this roundtable on October 1, 2013, *see* 78 FR 45901 (July 30, 2013); however, it was cancelled due to the government shutdown. The Commission announced the March 28 roundtable in February 2014. *See* 79 FR 9442 (Feb. 19, 2014). For more information about the roundtable, including the agenda, event materials, a transcript, and video recordings of the roundtable, *see* <http://www.ftc.gov/news-events/events-calendar/2014/03/care-labeling-rule-ftc-roundtable>.

<sup>18</sup> One comment is posted at <http://www.ftc.gov/policy/public-comments/initiative-489>. Eighteen comments are posted at <http://www.ftc.gov/policy/public-comments/initiative-548>.

requirements under the Regulatory Flexibility Act and the Paperwork Reduction Act.

## **II. Summary of Comments and Roundtable**

The Commission received 106 comments in response to the 2012 NPRM and 2014 roundtable.<sup>19</sup> Individuals, many of them professional cleaners, filed the majority of comments. The Commission also received comments from government agencies,<sup>20</sup> industry standard-setting and related organizations,<sup>21</sup> environmental advocacy organizations,<sup>22</sup> equipment manufacturers and solvent suppliers,<sup>23</sup> and trade associations representing industries affected by the Rule.<sup>24</sup> In addition, 17 individuals representing a variety of stakeholders participated in the three roundtable discussion groups, which included audience participation. The commenters and roundtable participants (“comments” or “commenters”) addressed four issues: (1) professional wetcleaning; (2) use of care symbols; (3) reasonable basis provisions; and (4) the Rule definitions and

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<sup>19</sup> The Commission has assigned each comment a number appearing after the name of the commenter and the date of submission. This SNPRM cites comments using the last name of the individual submitter or the name of the organization, followed by the number assigned by the Commission.

<sup>20</sup> Two California agencies filed comments: the Air Resources Board (451-70), Department of Toxic Substances Control (451-96). The European Union also filed a comment (451-67).

<sup>21</sup> American Association of Textile Chemists & Colorists (AATCC) (548-15), ASTM International (451-77), and Ginetex (451-37), which is responsible for the care labeling system used in European countries.

<sup>22</sup> The Toxic Use Reduction Institute (“TURI”) (451-54 and 548-28), UCLA Sustainable Technology & Policy Program (451-87 and 548-27).

<sup>23</sup> *E.g.*, Miele (451-68, 72 and 76) and GreenEarth Cleaning (451-41 and 548-9 and 17).

<sup>24</sup> American Apparel & Footwear Association (451-88 and 548-26), Drycleaning & Laundry Institute (451-71), The Hosiery Association (541-69), International Drycleaners Congress (451-32), National Cleaners Association (451-98 and 548-22), Professional Leather Cleaners Association (451-84 and 548-14), Professional Wet Cleaners Association (451-59 and 548-18), United States Association of Importers of Textiles & Apparel (USA-ITA) (451-73).

appendix.

A. Professional Wetcleaning

Commenters addressed a variety of issues relating to wetcleaning, including: (1) the dryclean instructions on many labels, which some commenters claimed are unfair or deceptive; (2) the environmental and health benefits of wetcleaning; (3) the relative cost of wetcleaning and drycleaning; (4) the cost of substantiating wetcleaning instructions; (5) consumer access to, and preferences regarding, wetcleaning; (6) the content of wetcleaning instructions; and (7) whether the Rule should permit or require a wetcleaning instruction.

1. Consumer Understanding Regarding Professional Wetcleaning from Dry Cleaning Instructions

Several commenters maintained that the current dryclean instruction is deceptive and unfair because they argue that it implies that drycleaning is the only safe and effective cleaning method, when, in fact, wetcleaning may be an effective, alternative method of cleaning.<sup>25</sup> The Rule currently allows marketers to provide a dryclean instruction on a label if they have a reasonable basis to believe that drycleaning is a safe and effective cleaning method. Drycleaning need not be the only, or even the best, method of cleaning the item. Some commenters contended, however, that contrary to the Rule's intent empirical and anecdotal evidence indicates many consumers misunderstand

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<sup>25</sup> See roundtable presentation by Peter Sinsheimer from UCLA, available at [http://www.ftc.gov/system/files/documents/public\\_events/114528/march\\_28\\_sinsheimer\\_ftc\\_presentation.pdf](http://www.ftc.gov/system/files/documents/public_events/114528/march_28_sinsheimer_ftc_presentation.pdf); Sinsheimer (548-27), Huie (548-12) (dryclean instruction deceptive because implies dryclean only), Roh (548-5) (dryclean instruction deceptive unless wetclean instruction mandated); Roundtable Transcript at 9 and 12-18.



the dryclean instruction to mean that drycleaning is either the only or the recommended cleaning method.

Peter Sinsheimer from UCLA submitted an online consumer study by Harris Interactive to support his contention that the Rule's dryclean instruction is deceptive and unfair.<sup>26</sup> The study, conducted in September 2013 using close-ended questions, involved 2,000 adults. According to Sinsheimer, about 89% of the study respondents interpreted "dryclean" to mean that drycleaning is the only, or the recommended, cleaning method.<sup>27</sup> Only about 7% understood "dryclean" to mean that drycleaning is just one reliable method for cleaning the item.

Several other commenters also asserted that consumers misinterpret the dryclean instruction. For example, one trade association stated that many, if not all, consumers interpret the dryclean label as "do not wash."<sup>28</sup> In addition, two consumer surveys considered by the Commission during the last Rule review yielded results consistent with the Harris Interactive online survey. One 1998 survey showed that 73.2% of the consumers surveyed interpreted "dryclean" to mean that the item must be drycleaned, professionally cleaned, or otherwise specially taken care of.<sup>29</sup> A second survey of female

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<sup>26</sup> See Sinsheimer roundtable presentation, available at [http://www.ftc.gov/system/files/documents/public\\_events/114528/march\\_28\\_sinsheimer\\_ftc\\_presentation.pdf](http://www.ftc.gov/system/files/documents/public_events/114528/march_28_sinsheimer_ftc_presentation.pdf); Sinsheimer (548-27); Roundtable Transcript at 9 and 17-18. The Commission has concerns about certain methodological limitations of the study that reduce its probative value, discussed in greater detail in section III.A.2.

<sup>27</sup> Specifically, 42% of the respondents interpreted "dryclean" to mean that drycleaning is the only method for cleaning the item (Q3010). Additionally, 47% of respondents interpreted "dryclean" to mean it is the recommended cleaning method.

<sup>28</sup> DLI (451-71).

<sup>29</sup> 65 FR at 47268. Despite this interpretation of the dryclean instruction, 49% said they

heads of household who do laundry showed that 44% interpreted “dryclean” to mean that drycleaning is the only acceptable way to clean the item.<sup>30</sup>

Commenters generally agreed that a substantial number of garments labeled “dryclean” or “dryclean only” can be professionally wetcleaned, although they disagreed on the percentage. Sinsheimer cited studies showing that 99% of these items can be wetcleaned.<sup>31</sup> Professional wetcleaners also indicated that a very high percentage of these textiles can be wetcleaned, including those containing wool and cashmere.<sup>32</sup> Other commenters asserted that wetcleaning is not necessarily suitable for certain types of fibers (*e.g.*, pure wool) and stains (*e.g.*, water soluble stains can be wetcleaned while other types of stains such as grease may require drycleaning) and can lead to loss of color, bleeding, shrinkage, and undesired changes in an item’s surface character.<sup>33</sup> None of the commenters disputed that wetcleaning is a viable method of cleaning and an effective alternative to drycleaning in at least some instances.

## 2. Environmental and Health Issues

Some commenters contended that wetcleaning is always better for the environment and human health than drycleaning. Others asserted that drycleaning is

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had washed or laundered items labeled “dryclean.” Of these consumers, 63.4% were satisfied with the results, and 11.1% were sometimes satisfied. *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Roundtable Transcript at 17-18.

<sup>32</sup> *E.g.*, Chang (451-60), PWA (451-59) (99.9% can be wetcleaned); Roundtable Transcript at 47-49.

<sup>33</sup> See roundtable presentation by Professor Riggs of Texas Woman’s University, available at [http://www.ftc.gov/system/files/documents/public\\_events/114528/charles\\_riggs\\_presentation\\_ftc.pptx](http://www.ftc.gov/system/files/documents/public_events/114528/charles_riggs_presentation_ftc.pptx); and Roundtable Transcript at 27-31, 43, 58, and 65-66.

comparable or superior under some circumstances. Both roundtable presentations addressed this issue, as did a number of the commenters.

Government agencies, environmental advocacy organizations, and professional wetcleaners touted the environmental and health benefits of wetcleaning. Paul Matthai, a senior regulatory analyst for the Pollution Prevention Division/Office of Pollution Prevention and Toxics (PPD/OPPT) at the EPA opined that wetcleaning is “inherently environmentally preferable” to drycleaning.<sup>34</sup> Sinsheimer stated that the vast majority of drycleaners in the United States operate machines with perchloroethylene (“perc”), a chemical listed in the Clean Air Act as a hazardous air pollutant and a leading source of soil and drinking water contamination.<sup>35</sup> Two California government agencies<sup>36</sup> and a second environmental advocacy organization<sup>37</sup> also asserted that perc causes soil and groundwater contamination while professional wetcleaning uses less energy and water, and improves air quality and employee health.<sup>38</sup> In December 2007, the California Air Resources Board adopted a regulation eliminating the use of perc in drycleaning by 2023.<sup>39</sup> Joy Onasch of the Toxic Use Reduction Institute (“TURI”) asserted that hydrocarbons and other perc alternatives have significant environmental and health hazards such as increased emissions of volatile organic compounds, fire, groundwater

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<sup>34</sup> Roundtable Transcript at 60.

<sup>35</sup> Sinsheimer (451-87).

<sup>36</sup> Air Resources Board (451-70) and Department of Toxic Substances Control (451-96).

<sup>37</sup> TURI (451-54 and 548-28).

<sup>38</sup> Roundtable Transcript at 45, 56, 60-64.

<sup>39</sup> Air Resources Board (451-70).

contamination, and potential adverse human health effects.<sup>40</sup> A number of professional wetcleaners favored wetcleaning due to concerns about toxic or unhealthy drycleaning solvents.<sup>41</sup>

Other commenters disputed these claims. Charles Riggs of Texas Woman's University stated that modern drycleaning equipment filters and then reuses solvents until they can be disposed of. He also asserted that wetcleaning discharges water containing detergents as well as more aggressive spot cleaning solvents into the sewage system.<sup>42</sup> Mary Scalco of the Drycleaning and Laundry Institute ("DLI") asserted that wetcleaning may be no more environmentally friendly than drycleaning, depending on the equipment and drycleaning solvent used.<sup>43</sup> Ann Hargrove of the National Cleaners Association ("NCA") asserted that some wetcleaners are not allowed to use the septic system because they used dry solvents that ended up in the water.<sup>44</sup> Another commenter stated that wetcleaning consumes significantly more water than drycleaning and can lead to the discharge of solvents into the sewer.<sup>45</sup>

### 3. Wetcleaning and drycleaning service costs

Some commenters contended that wetcleaning costs no more than drycleaning, while others explained that costs depend on many factors, including the type and age of equipment and solvents used. Sinsheimer, Onasch, and Juli Mo of the Professional

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<sup>40</sup> TURI (451-54).

<sup>41</sup> *E.g.*, PWA (548-59 and 60), Mo (548-19).

<sup>42</sup> Riggs Roundtable PowerPoint presentation; Roundtable Transcript at 34-37.

<sup>43</sup> Roundtable Transcript at 54-55 and 59.

<sup>44</sup> *Id.* at 58.

<sup>45</sup> Sitz (548-6).

Wetcleaners Association cited research and anecdotal evidence that wetcleaning is either less expensive or at least does not cost more than drycleaning.<sup>46</sup> For example, Onasch reported that several cleaners in Massachusetts did not raise their prices after switching from perc drycleaning to wetcleaning.<sup>47</sup> A June 2012 report submitted by TURI estimated that the average cost per pound for wetcleaning was \$1.10; it also estimated the cost was \$1.02 for perc and \$0.88 for high-flash hydrocarbons, two types of drycleaning solvents.<sup>48</sup> Onasch of TURI asserted that data since 2012 shows that wetcleaning does not cost more than drycleaning.<sup>49</sup> Riggs stated that service prices vary not only by the technology used to clean, but also the price range of the garments cleaned and the age of the equipment.<sup>50</sup>

#### 4. Substantiation costs

Commenters disagreed about the cost of substantiating wetcleaning instructions and the potential burden associated with commenter proposals to require manufacturers to provide a wetcleaning instruction. Sinsheimer contended that his survey of professional wetcleaners shows that they can determine whether an item can be wetcleaned for an average cost of \$50-\$100 if testing is needed.<sup>51</sup> In contrast, Scalco contended that DLI provides comprehensive testing for washing, drycleaning, and wetcleaning instructions for about \$1,400, and that wetcleaning testing costs about

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<sup>46</sup> Sinsheimer roundtable power point presentation; Roundtable Transcript at 19, 67, and 69-70.

<sup>47</sup> Roundtable Transcript at 70.

<sup>48</sup> TURI (451-54); Roundtable Transcript at 66.

<sup>49</sup> Roundtable Transcript at 67-68.

<sup>50</sup> *Id.* at 68 and 71-72.

<sup>51</sup> Sinsheimer roundtable PowerPoint presentation; Roundtable Transcript at 18.

\$467.<sup>52</sup> Other commenters, including Riggs, Marie D’Avignon of the American Apparel and Footwear Association, and Adam Mansell of the United Kingdom Fashion and Textile Association, disputed Sinsheimer’s contention that requiring a wetcleaning instruction would not entail significant or burdensome costs for manufacturers.<sup>53</sup>

#### 5. Consumer access and preferences

Commenters who addressed consumers’ desire for wet cleaning asserted that at least some consumers would prefer wetcleaning but not all consumers have access to it. As noted earlier, some commenters presented evidence that many consumers would prefer wetcleaning if they knew of the option and the quality and cost were comparable.<sup>54</sup> Similarly, professional wetcleaners asserted that many cleaners and consumers prefer wetcleaning.<sup>55</sup> None of the commenters disputed this contention, however GreenEarth noted that recent Google search data suggests far less interest in wetcleaning than drycleaning.<sup>56</sup>

Commenters also agreed that not all consumers have access to wetcleaning, particularly in certain regions of the country. GreenEarth added that the limited number of cleaners in the Professional Wetcleaners Directory suggests that drycleaning services are much more accessible than wetcleaning services and that wetcleaners tend to be concentrated on the East and West Coasts. Sinsheimer described this as a “chicken and

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<sup>52</sup> Roundtable Transcript at 78-79.

<sup>53</sup> *Id.* at 43-44, 75-77 and 81; AAFA (48-26).

<sup>54</sup> *See* Sinsheimer roundtable presentation, available at [http://www.ftc.gov/system/files/documents/public\\_events/114528/march\\_28\\_sinsheimer\\_ftc\\_presentation.pdf](http://www.ftc.gov/system/files/documents/public_events/114528/march_28_sinsheimer_ftc_presentation.pdf); Sinsheimer (548-27); Roundtable Transcript at 14.

<sup>55</sup> *E.g.*, PWA (548-59 and 60), Mo (548-19).

<sup>56</sup> GreenEarth (548-9 at 3).

egg” problem, arguing that the absence of a wetcleaning instruction on labels is an enormous barrier to the diffusion of wetcleaning services.<sup>57</sup>

6. Content of wetcleaning instructions

Many commenters favored a “professionally wetclean” instruction because they asserted that consumers might misinterpret a “wetclean” instruction to mean home washing.<sup>58</sup> None preferred “wetclean” to “professionally wetclean.” Some also urged the Commission to require a “do not wash” warning – where warranted – to minimize the risk that consumers will misunderstand a care instruction and inadvertently damage a garment that is labeled for wetcleaning by laundering it.<sup>59</sup>

7. Whether to permit or require a wetcleaning instruction on items that can be wetcleaned

Commenters disagreed on whether the Commission should require or, as the Commission proposed, permit a wetcleaning instruction. Sinsheimer, Onasch, Mo, California government agencies, many members of the wetcleaning industry, and some consumers urged the Commission to require a wetcleaning instruction.<sup>60</sup> In contrast,

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<sup>57</sup> Roundtable Transcript at 91.

<sup>58</sup> *E.g.*, Brown (451-11), Camerino (451-14), Chen (451-17), Culotta (451-56), Daniel (451-42), DLI (451-71), Ocampo (451-52), Feingold (548-7), GreenEarth (451-41 and 548-9 at 3), Park (451-95), Blacker (451-82), Knox (451-65), Yerby (451-55), Peterson (451-39), Kinzer (451-36), Veach (451-31), Shaffer (451-30), Woodruff (451-27), Wentworth (451-26), Laramie (451-13), Mishann (451-12), Staal (451-9), Johnson (451-6); Roundtable Transcript at 95-98.

<sup>59</sup> *E.g.*, Chen (451-17), GreenEarth (451-41 and 548-9 at 3), Shaffer (451-30), Woodruff (451-27), Laramie (451-13).

<sup>60</sup> *E.g.*, Sinsheimer Roundtable presentation, California Air Resources Board (451-70), California Department of Toxic Substances Control (451-96), Yim (451-83), Feingold (548-7), Huie (451-80 and 548-12), Mo (451-79), Miele (451-68 and 76), Onasch (451-

Riggs, D’Avignon, Mansell, Scalco, and many members of the drycleaning industry favored permitting a wetcleaning instruction.<sup>61</sup>

B. Use of Care Symbols

Commenters addressed: (1) the use of ASTM and ISO symbols; (2) the differences between the 2005 and 2012 ISO symbols; (3) concerns about the Rule specifying the year of the permitted ASTM or ISO symbol system; (4) the timing of future symbol system changes; and (5) consumer understanding of symbols.

1. ASTM vs. ISO symbols

Commenters addressing the issue urged the Commission to modify the Rule to allow for the use of updated ASTM symbols, and most supported amending the Rule to permit the use of ISO symbols, and either supported, or did not object to, retaining the option of using ASTM symbols.<sup>62</sup> These commenters explained that manufacturers commonly use ISO symbols in other countries; therefore, allowing their use in the United States would increase flexibility and reduce labeling costs. None of the commenters viewed the differences between the ISO and ASTM symbols as a problem, with the exception of natural drying symbols discussed further below.<sup>63</sup>

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54), Ornholmer (451-66), PWA (451-59), Roh (451-75 and 548-21), Sung (451-74); Roundtable Transcript 19-20 and 85.

<sup>61</sup> *E.g.*, AAFA (451-88), Behzadi (451-88), GreenEarth (451-41 and 548-9 at 3), International Drycleaners Congress (451-32), NCA (451-98 and 548-22); Roundtable Transcript at 42-44, 46-47, and 51.

<sup>62</sup> *E.g.*, AAFA (451-88 and 548-26), European Union (451-67), Ginetex (451-37), GreenEarth (451-41), International Drycleaners Congress (451-32), Kylo (451-78), Knox (451-65), Lee (451-51), Poggi (451-4), and USA-ITA (451-73); and Roundtable Transcript at 122-23, 163-64, and 171.

<sup>63</sup> Roundtable Transcript at 120-21.



In addition, commenters opposed the Commission's proposal to require labels to identify the symbols as ISO-based.<sup>64</sup> None believed that identifying the ISO system on labels would help consumers, and many noted that requiring this disclosure would impose unnecessary costs on manufacturers.

## 2. Differences between the 2005 and 2012 ISO symbols

Nearly all relevant commenters favored the 2012 ISO symbols.<sup>65</sup> They noted that manufacturers use the current 2012 ISO symbols and use of the 2005 symbols would therefore impose unnecessary costs. In addition, three commenters explained that either the key differences between the 2012 and 2005 ISO standards are minor, or the 2012 standard is an improvement.<sup>66</sup> Some noted that, unlike the 2005 symbols, the 2012 symbols include natural drying symbols that differ from the ASTM natural drying symbols. Two commenters supported allowing use of the 2012 ISO symbols in lieu of written terms, except for the natural drying symbols. They contended these drying symbols are confusing, seldom used in the United States, or differ from ASTM symbols.<sup>67</sup>

## 3. Recognizing ASTM and ISO standards without identifying the year

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<sup>64</sup> E.g., European Union (451-67), GreenEarth (548-9), Kylo (451-78); Roundtable Transcript at 130-136, 168-170 and 175-176.

<sup>65</sup> E.g., AAFA (451-88 and 548-26), Bide (451-48), Drøjdahl (451-53), European Union (451-67), Ginetex (451-37), GreenEarth (451-41), Kylo (451-78), International Drycleaners Congress (451-32), and Poggi (451-4); Roundtable Transcript at 125-26 and 140.

<sup>66</sup> GreenEarth (548-9), Roundtable Transcript at 132-33.

<sup>67</sup> GreenEarth (548-9); Roundtable Transcript at 151.

Some commenters advocated allowing the most recent ASTM and ISO symbol systems without specifying the year or version of the standards.<sup>68</sup> They asserted that it takes too long for the Commission to update the Rule once the ASTM or ISO symbol system changes, creating problems for marketers.<sup>69</sup>

#### 4. Timeline for ASTM and ISO updates

Both ASTM and ISO have updated their care labeling symbol systems since the Commission initiated its review of the Care Labeling Rule. ASTM most recently updated its care labeling system in 2018, while ISO updated its system in 2012. Several commenters expressed concern that the ASTM and ISO symbol systems have not adequately addressed drycleaning solvents other than perc and petroleum.<sup>70</sup>

In its comment on the ANPR, Ginetex urged the Commission to repeal the Rule in part due to the difficulty of keeping up with market developments and innovations. Specifically, it argued that the Rule should not be mandatory because a voluntary scheme could better adapt to technical and environmental developments.<sup>71</sup> Others noted that Canada and European nations do not require care labeling instructions.<sup>72</sup>

Finally, some commenters urged the Commission to review the Rule more frequently to help keep up with changes in the marketplace and ASTM and ISO

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<sup>68</sup> *E.g.*, AAFA (451-88 and 548-26), Kylo (451-78), Keyes (451-64); Roundtable Transcript at 144-45.

<sup>69</sup> Roundtable Transcript at 130, 144-45, 162, and 173-75.

<sup>70</sup> *E.g.*, Brown (451-11), Camerino (451-14), Daniel (451-42), Douglas (451-33), GreenEarth (451-41 and 548-9), Slan (451-57). ASTM updated its symbol system in 2014 to provide that the letter “F” enclosed in the circle symbol represents drycleaning in hydrocarbon or silicone solvent but not perc solvent.

<sup>71</sup> Ginetex (384-39).

<sup>72</sup> Roundtable Transcript at 175.

standards.<sup>73</sup> One explained that, for many years, the industry and technology were relatively static,<sup>74</sup> but recently there has been a lot of change, with more expected. If the Commission plans to continue regulating care labels, another urged the Commission staff to attend ISO, ASTM, and American Association of Textile Chemists & Colorists (“AATCC”) meetings to keep abreast of industry changes.<sup>75</sup>

#### 5. Consumer understanding of symbols

Several commenters opined that many consumers do not understand all of the care symbols currently in use.<sup>76</sup> As a result, they opposed allowing the use of any symbols.<sup>77</sup> Still others contended that using both ASTM and ISO symbols will likely cause consumer confusion.<sup>78</sup> Others expressed concern that consumers may not understand some symbols, but nonetheless favored allowing their use. They explained that consumers understand the most relevant symbols (*e.g.*, washing, ironing, and professional care symbols), and professional cleaners will know the rest.<sup>79</sup> Moreover, some consumers prefer written terms to symbols, possibly because they do not understand the symbols. For example, J.C. Penney reported that its customers complained when it tried to use only symbols with one brand.<sup>80</sup> However, none of the roundtable participants that

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<sup>73</sup> *Id.* at 225-26.

<sup>74</sup> *Id.* at 229-30.

<sup>75</sup> *Id.* at 226-28.

<sup>76</sup> *E.g.*, GreenEarth (548-9), Huie (548-12); Roundtable Transcript at 94-95, 123-27, 146, 157-58, and 166.

<sup>77</sup> *E.g.*, Daniel (451-42), The Hosiery Association (451-69), Slan (451-57), Patel (451-40), Kinzer (451-36), Reiner (451-25), Pflueger (451-5).

<sup>78</sup> *E.g.*, DLI (451-71) and Keyes (451-64); Roundtable Transcript at 119-120 and 122.

<sup>79</sup> Roundtable Transcript at 126-27 and 146-47.

<sup>80</sup> *Id.* at 170-71. Given the context of the Workshop remarks (“We did try one brand,

expressed concern about consumer understanding of symbols opposed allowing the use of symbols to provide care instructions. In addition, several noted that the majority of labels in the United States already use symbols in addition to, or in lieu of, written instructions.<sup>81</sup>

### C. Reasonable Basis Provisions

Commenters addressed a variety of issues relating to the Rule's reasonable basis provision, including the Commission's proposal, Green Earth's proposal, and whether, and to what extent, the Rule should require the testing of entire products to substantiate care instructions.

#### 1. Commission proposal

In 2012, the Commission proposed clarifying the Rule's reasonable basis requirement by incorporating examples of instances where testing an entire garment may be needed to determine care instructions, and where such testing is not needed.

Commenters generally favored the Commission's proposal. All of the commenters addressing the issue supported clarifying the reasonable basis provision, and either supported the proposal<sup>82</sup> or urged the Commission to provide more clarification and additional examples.<sup>83</sup> Commenters identified materials and components possibly

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specifically in our intimates, to just use the symbols and our customers complained so much about it, they had no idea"), it appears that JCPenney discontinued the symbol-only practice for the brand in question.

<sup>81</sup> *Id.* at 131.

<sup>82</sup> *E.g.*, AAFA (451-88 and 548-26), DLI (541-71), GreenEarth (451-41 and 548-9), Knox (451-65), and NCA (451-98); Roundtable Transcript at 179-185.

<sup>83</sup> *E.g.*, Brown (451-11), Chen (451-17), DLI (541-71), GreenEarth (451-41 and 548-9), Feingold (548-7), International Drycleaners Congress (451-32), Kinzer (451-36), Knox

warranting testing when combined with other materials or components, including elastic, spandex, vinyl, acetates, triacetates, polyurethane, silks, leather, metallic, and plasticizers, along with components not easily removed, including beads, buttons, sequins, and interfacings.<sup>84</sup> None opposed the Commission's proposal.

## 2. GreenEarth proposal

GreenEarth agreed with the Commission's proposal but also suggested listing additional examples that may require testing, such as garments containing: (1) sizings, elastics, vinyl, acetates, triacetates, polyurethanes, silks, natural skins, or other plasticizers known to be damaged in drycleaning; and (2) water soluble dyes, wool, natural fiber, or skins when wetcleaning is recommended. No commenters expressed support for, or opposition to, GreenEarth's proposal. However, as noted above, many commenters identified similar issues.

## 3. Testing of entire garments vs. components

Commenters disagreed on the extent to which manufacturers need to test entire items. Some identified situations where such testing would be necessary, such as white and black spandex, where dye bleed is an issue.<sup>85</sup> NCA and others explained that the aggressiveness of the drycleaning solvent is not the only factor that may require testing because less aggressive solvents can be heated to enhance their aggressiveness, and

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(451-65), Laramie (451-13), Patel (451-40), Shaffer (451-30), Sitz (548-6), Staal (451-9), Vieczas (451-10), and Yerby (451-55); Roundtable Transcript at 185-186.

<sup>84</sup> *Id.*

<sup>85</sup> *E.g.*, Anderson (548-13), Feingold (548-7), GreenEarth (548-9 and 548-17), and Sitz (548-6); Roundtable Transcript at 185-186.

longer cleaning and drying cycles result in more aggressive mechanical action.<sup>86</sup>

Manufacturers, however, indicated that testing entire items is often unnecessary and would entail excessive costs.<sup>87</sup> For example, one said that it tests fabrics as necessary rather than finished garments and solicits information from suppliers about how their trim reacts to certain chemicals.<sup>88</sup>

#### D. Rule Definitions and Appendix

Commenters addressed a variety of issues relating to the Rule's definitions and Appendix, including the Commission's proposal to amend the definition of drycleaning, the Appendix's provision on leather care instructions, and the Rule's definitions of hot, warm, and cold water.

##### 1. Drycleaning definition revisions

Commenters generally favored the Commission's proposal, although they disagreed on whether to list specific solvents in the drycleaning definition. All relevant commenters favored updating the definition by clarifying that it includes solvents other than water (non-aqueous solvents) and dropping the term "organic" and the reference to fluorocarbons (a solvent no longer in use).<sup>89</sup> They disagreed on whether to list examples of current drycleaning solvents. Some supported the proposal to update the list. Others expressed concern that any list would be misinterpreted as complete, rather than illustrative. Therefore, they stated that the list might discourage innovation and the use of

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<sup>86</sup> *E.g.*, NCA (548-22); Roundtable Transcript at 142-4.

<sup>87</sup> *E.g.*, AAFA (548-26); Roundtable Transcript at 186-88.

<sup>88</sup> *E.g.*, Roundtable Transcript at 187-88.

<sup>89</sup> AAFA (451-88), DLI (451-71), GreenEarth (451-41 and 548-17), Knox (451-65), NCA (451-98); Roundtable Transcript at 209-11.

new solvents.<sup>90</sup> Some expressed concerns about including solvents rarely used, such as aldehyde, or solvents that cleaners may stop using in the future.<sup>91</sup>

## 2. Leather instruction

Commenters also disagreed on the need to amend the Rule's Appendix on leather care instructions. Dart Poach of the Professional Leather Cleaners Association ("PLCA") urged the Commission to amend this provision so the instruction addresses professional refinishing.<sup>92</sup> Specifically, PLCA proposed the instruction "Leather Clean and Refinish by Professional Leather Cleaner Only" because many textile products with leather components need professional leather refinishing as well as professional leather cleaning. In addition, several commenters urged the Commission to amend the Rule's reasonable basis provision to address leather care.<sup>93</sup>

Other commenters questioned the need for the proposed amendment because they have not received consumer complaints or otherwise seen a problem.<sup>94</sup> For example, one stated that with the advent of more gentle alternatives to perc, many items with leather trim do not need refinishing.<sup>95</sup> No other commenters supported the amendment proposed by PLCA.

## 3. Water temperature issues

Commenters disagreed on whether the Commission should amend the Rule to

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<sup>90</sup> Roundtable Transcript at 212-13.

<sup>91</sup> Blacker (451-82); Roundtable Transcript at 211-12.

<sup>92</sup> PLCA (451-84 and 548-14); Roundtable Transcript at 182, 200, 202-03, and 208-09.

<sup>93</sup> *E.g.*, Laramie (451-13), Staal (451-9), and Vieczas (451-10).

<sup>94</sup> Roundtable Transcript at 202 and 205-08.

<sup>95</sup> *Id.* at 205.

incorporate the AATCC's most recent definitions of hot, warm, and cold water used in testing. AATCC explained that its new temperature ranges fall within those in the Rule, and therefore the Commission does not need to revise them.<sup>96</sup> Instead, AATCC proposed adding a new provision stating:

The Standardization of Home Laundry Test Conditions Monograph (M6) developed by American Association of Textile Chemist & Colorists (AATCC) may be used as a supplement to refer [to] a range of washing temperatures available in today's consumer laundering machines. It should be noted that these temperatures fall within the tolerance range specified in section 423.2(d) of 16 CFR [sic]. This monograph may be obtained from the AATCC website: <http://www.aatcc.org/testing/supplies/docs/205-M06.pdf> or may be reviewed at the Federal Trade Commission, Room 130, 600 Pennsylvania Avenue NW, Washington DC.

Several commenters disagreed, arguing that the Rule's temperatures should match those specified for testing, even though consumers' laundry temperatures vary significantly based on location, season, and heater settings.<sup>97</sup>

### **III. Proposed Repeal**

Section 18 of the FTC Act, 15 U.S.C. 57a, authorizes the Commission to promulgate, amend, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of

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<sup>96</sup> AATCC (548-15); Roundtable Transcript at 192-94.

<sup>97</sup> Roundtable Transcript at 191-92 and 195-198.



section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1). The Commission regularly reviews its rules to ensure they are up-to-date, effective, and not overly burdensome, and has repealed a number of trade regulation rules after finding they were no longer necessary to protect consumers.<sup>98</sup>

Comments in the record suggest that current conditions support repealing the Rule. Specifically, the record suggests that the existing Rule may no longer be necessary because manufacturers, in the absence of the Rule, are likely to provide accurate care information to consumers as a matter of course.<sup>99</sup> Additionally, the Rule may have failed to keep up with a dynamic marketplace. The record also raises concerns that the Rule may have a negative impact on innovation, particularly in the development and adoption of cleaning technologies and disclosures. Finally, repeal would provide manufacturers with additional flexibility in labeling and address concerns raised by some commenters that the Rule mandates care disclosures that may be confusing to some consumers. To the extent that confusion about currently mandated care disclosures may exist, labelers

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<sup>98</sup> See, e.g., 16 CFR part 410 (television screen sizes) (83 FR 50484 (Oct. 19, 2018)) (rule unnecessary; lack of deceptive claims); 16 CFR part 419 (games of chance) (61 FR 68143 (Dec. 27, 1996)) (Rule outdated; violations largely non-existent; and Rule has adverse business impact); 16 CFR part 406 (used lubricating oil) (61 FR 55095 (Oct. 24, 1996)) (Rule no longer necessary, and repeal will eliminate unnecessary duplication); 16 CFR part 405 (leather content of belts) (61 FR 25560 (May 22, 1996)) (Rule unnecessary and duplicative; Rule's objective can be addressed through guidance and case-by-case enforcement); and 16 CFR part 402 (binoculars) (60 FR 65529 (Dec. 20, 1995)) (technological improvements render Rule obsolete).

<sup>99</sup> Although commenters in this proceeding did not provide substantial information about the prevalence of deceptive practices in the current marketplace, no commenter indicated that the market is free of deception. In response to the ANPR, for instance, a few indicated that some non-compliant parties appear to be misinformed or to misunderstand the requirements. Textile Industry Affairs (384-112) and The Clorox Company (384-122).

will be incentivized by competitive pressure, rather than compelled by the Rule, to respond to consumer demand for better disclosures. In light of these considerations, the Commission seeks comment on the costs and benefits of repealing the Rule. The Commission emphasizes that, even if it repeals the Rule, Section 5 of the FTC Act (15 U.S.C. 45(a)) would continue to prohibit manufacturers from engaging in unfair or deceptive practices in labeling.

A. The Rule May Be Unnecessary

The record suggests that a legal mandate may not be necessary to ensure manufacturers provide clear, accurate care instructions on garments. Notably, most European Union nations and Canada have voluntary care instruction systems and, according to the record, manufacturers in those markets voluntarily provide cleaning instructions on a routine basis.<sup>100</sup> Moreover, the record also suggests that market demand for clear care labels in the U.S. is sufficient to motivate marketers to provide them. For example, a representative for JCPenney reported that consumer outcry was substantial when the company tried to sell one of its brands without word-based care instructions,

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<sup>100</sup> Care labeling is voluntary in Canada and most of Europe; *see* Roundtable Transcript at 175 (indicating that care labeling is voluntary in Europe and Canada) and Ginetex (384-83) (urging the Commission to consider a voluntary approach). *See also* Feltham, T., Martin, L. (2006, June) “Apparel Care Labels: Understanding Consumers’ Use of Information,” [https://www.researchgate.net/publication/228295594\\_Apparel\\_Care\\_Labels\\_Understanding\\_Consumers'\\_Use\\_of\\_Information](https://www.researchgate.net/publication/228295594_Apparel_Care_Labels_Understanding_Consumers'_Use_of_Information) (“Even though the care labeling (in Canada) is voluntary, consumers see care labels on almost all garments purchased in Canada”); and “European Commission DG Enterprise and Industry Study of the need and options for the harmonisation of the labelling of textile and clothing products,” 24 January 2013, Final Report, Matrix Insight Ltd., at 43-44, available at *ec.europa.eu/DocsRoom/documents/10480/attachments/1/translations/en/renditions/native*.

apparently leading the company to discontinue the practice.<sup>101</sup>

This result is not surprising. Consumers need to clean their clothes and want to do so without ruining their investment, particularly when that investment is significant. Manufacturers who do not provide cleaning instructions will likely disappoint consumers and lose sales. The J.C. Penney example demonstrates this point.<sup>102</sup> Therefore, market forces appear to be sufficient to ensure that manufacturers provide cleaning instructions to their consumers without a regulatory requirement. Accordingly, the Rule's repeal appears unlikely to have any significant negative impact on care information currently available to consumers.

Moreover, mandatory care labeling instructions for all garments may impose unnecessary compliance costs on manufacturers. With mandatory instructions, manufacturers bear the cost of providing instructions on all garments. However, there is no indication that every type of garment needs instructions to ensure proper cleaning. For example, consumers may not need instructions for basic cotton t-shirts. Without mandatory instructions, manufacturers likely would provide care instructions for garments only if consumer demand warranted, thereby avoiding those costs when care instructions are not necessary for consumers.

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<sup>101</sup> Roundtable Transcript at 170-171.

<sup>102</sup> Moreover, if a manufacturer provides no cleaning information, failing to warn that a method a consumer could reasonably assume would be a safe method would in fact harm the garment, the manufacturer could be in violation of Section 5 and subject to a Commission law enforcement action. *See, e.g., Int'l Harvester*, 104 F.T.C. 949, 1058 (1984) ("It can also be deceptive for a seller to simply remain silent, if he does so under circumstances that constitute an implied but false representation.").

B. Keeping Up With Marketplace Changes

As some commenters discussed (section II.A. and B.), the Rule does not appear to have kept pace with advances in cleaning technology and care symbol revisions. Specifically, although the option of wetcleaning has been available in the marketplace for many years, the Rule still does not allow manufactures to present that option on labels. Moreover, the Rule currently incorporates a symbol system (ASTM D5489-96c) that has been superseded. Repeal would remove the confusion caused by outdated Rule provisions, as well as the need to update provisions constantly to address market changes.<sup>103</sup>

C. Potential Negative Impacts on Innovation

Repeal would also eliminate any possibility the Rule negatively affects market innovation. Over the course of the proceeding, some commenters suggested that the Rule might have had a negative impact on the adoption of new cleaning technologies. For example, commenters and workshop participants explained that the Rule's failure to address wetcleaning has placed professional wetcleaners at a competitive disadvantage and discouraged greater use of that technology. PWA explained, "we cannot market our services as 'Professional Wet Cleaning' because the care label says Dry Cleaning." Comments from wetcleaning equipment makers also raised concerns about the Rule's impact. For example, a representative for wetcleaning system developer Kreussler

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<sup>103</sup> In its comments (384-83), Ginetex argued that a voluntary scheme could better adapt to technical and environmental developments.

suggested the Rule language might prohibit innovation.<sup>104</sup> Some non-industry commenters raised similar concerns. Sinsheimer stated that if “the wet cleaning care label is not on the garment . . . that is an enormous barrier to the diffusion” of wetcleaning services. In addition, the Toxics Use Reduction Institute asserted that the current Rule “is limiting the spread of this safer technology [wetcleaning].”<sup>105</sup> The commenters also suggested the Rule has limited the use of newer solvents in drycleaning.<sup>106</sup>

At the same time, countervailing market trends unrelated to labeling may have contributed to the lack of adoption of new cleaning technologies identified by these commenters. Specifically, an overall decline in the demand for professional cleaning may have affected the adoption of new technologies, driven by factors such as the increased wear of casual workplace clothing, reduced smoking, and the use of “wrinkle

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<sup>104</sup> Roundtable Transcript at 156 (Fitzpatrick).

<sup>105</sup> Roundtable Transcript at 91 (Sinsheimer); and Toxics Use Reduction Institute (394-86). *See also*, PWA (451-59), Miele (384-108), and San Francisco Department of the Environment (384-89). PWA also argued that labeling garments “Dry Clean” or “Dry Clean Only” even though they can be successfully wetcleaned is unfair to professional wetcleaners. If a consumer prefers to dryclean such garments, the wetcleaner faces the prospect of losing the business or deceiving the consumer by wetcleaning instead of drycleaning such garments. The dilemma of either lying to the customer or potentially losing business makes professional wetcleaning unappealing to many drycleaners. PWA (384-102).

<sup>106</sup> Earlier in the proceeding, several commenters argued the Rule’s restrictive “dryclean” definition discourages the use of solvents not recognized by the Rule and, therefore, risks curtailing technological advancement. *See* 77 FR at 58342-3 and 58347 (citing to comments Bromagen (384-91); Hagearty (384-61); Preece (384-54); and Yazdani (384-78)). More recent comments and statements at the Roundtable echoed these concerns. GreenEarth Cleaning (548-17) and Roundtable Transcript at 209 (Sopcich).

free” clothing that consumers can wash at home.<sup>107</sup> Nevertheless, repeal would eliminate any negative impacts the Rule may have on innovation in cleaning and disclosures.<sup>108</sup>

Finally, as noted above, several commenters provided empirical and anecdotal evidence suggesting that the Rule’s prescribed “dryclean” instruction may create confusion among some consumers.<sup>109</sup> To the extent that current mandated labels may be imperfect or limited, a benefit of the Rule’s repeal would be to afford manufacturers and sellers the freedom to improve existing labels, to label new cleaning methods as they enter the market, and to use widely recognized care symbol systems without waiting for updates to the Rule.

#### **IV. Request for Comments**

In light of the record evidence suggesting that the Rule may be unnecessary and out of date, the Commission is seeking comments whether to repeal the Rule in its entirety. In deciding whether to repeal the Rule, the Commission considers whether: (1) the Rule’s costs are offset by countervailing benefits to consumers or the market; (2) consumer demand is already sufficient to require labeling of at least the garments consumers care about; and (3) Section 5 of the FTC Act could adequately protect consumers in labeling those garments absent the Rule. In considering this third issue, the Commission is interested in views as to what type of agency guidance, if any, would

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<sup>107</sup> See, e.g., *Drycleaning’s Decline Is Permanent*, American Drycleaner (Dec. 20, 2010), at <https://americandrycleaner.com/articles/drycleanings-decline-permanent>.

<sup>108</sup> Another possibility is that rescinding the Rule may afford manufacturers and sellers the freedom to label new cleaning methods as they enter the market, to develop innovative and informative new disclosures, and to use widely recognized care symbol systems without waiting for updates to the Rule.

<sup>109</sup> See section II.A.1. for a discussion of these comments.

assist manufacturers in complying with Section 5 of the FTC Act absent the Rule. The Commission, therefore, asks for comment on these questions and any others issues commenters think are important for the Commission to consider in deciding whether to repeal the Rule.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Care Labeling Rule, 16 CFR part 423, Project No. R511915” on your comment. Because of the public health emergency in response to the COVID-19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comment online through the <https://www.regulations.gov> website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form provided by *regulations.gov*. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

If you file your comment on paper, write “Care Labeling Rule, 16 CFR part 423, Project No. R511915” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex C), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or

overnight service.

Because your comment will be placed on the publicly accessible website, <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential" – as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once



your comment has been posted at *www.regulations.gov* – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission’s consideration of the proposed repeal of the Care Labeling Rule. The Commission requests that comments provide factual data upon which they are based. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

### **Questions**

The Commission seeks comment on the costs, benefits, and market effects of repealing the Rule as proposed, and particularly the cost on small businesses. Comments opposing the proposed repeal should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Please identify any data and

empirical evidence that supports your answer.

1. What are the costs and benefits to manufacturers, retailers, professional cleaners, and consumers of the existing Rule?
2. What are the potential costs and benefits to manufacturers, retailers, professional cleaners, and consumers associated with the proposed repeal? Please specify whether the costs and benefits of an option are measured relative to the existing Rule.
3. What potentially unfair or deceptive practices concerning care labeling are occurring in the market?
4. What effect, if any, would repeal have on the care instruction information manufacturers provide to consumers, including whether and how care instructions, or the manner in which they are conveyed (*e.g.*, symbols versus text), change under each option?
5. Are care label instructions helpful in all instances, or only for certain types of garments? Please identify any data and empirical evidence that support your answer.
6. If the Commission were to repeal the Rule, what new or different costs would manufacturers incur to ensure they provide truthful and substantiated care information?
7. What incentives do manufacturers have to provide care labels in the absence of a regulatory mandate?
8. Do manufacturers or other sellers have refund policies for their garments? If so, what evidence must consumers provide to obtain refunds? How do companies inform consumers about refunds? What is the consumer burden associated with such refund programs? What are the costs associated for refund programs?

9. What, effect, if any, would repeal have on consumers' decisions regarding cleaning methods?
10. What effect would repeal have on consumers' use of alternative cleaning methods that are not specifically listed on the labels but that consumers may currently be using?
11. What effect would repeal likely have on the ability of industry participants to develop or adopt new technology?
12. What symbol systems would marketers use if the Commission were to repeal the Rule? Do commenters anticipate voluntary adoption of ASTM or ISO?
13. If the Commission repeals the Rule, should it issue guidance clarifying that a manufacturer need not list every possible cleaning method for a garment, and does not violate Section 5 as long as it possesses a reasonable basis for the care method(s) listed on its label?
14. Would repeal of the Rule create uncertainty among manufacturers with regard to "dry clean" instructions in light of the commenter concerns about potential confusion associated with the existing label? Would manufacturers need additional guidance on this issue from the FTC? If so, what should that guidance be?
15. What new or additional topics relating to care labeling or the Rule would it be useful for the Commission to address in guidance documents? Should such business guidance identify the use of ASTM or ISO symbols as safe harbors?

**V. Communications to Commissioners and Commissioner Advisors by Outside Parties**

Pursuant to Commission Rule 1.18(c)(1), the Commission has determined that

communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period on the staff report. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of “Sunshine” Meetings.<sup>110</sup>

## **VI. Regulatory Flexibility Act and Regulatory Analysis**

Under Section 22 of the FTC Act, 15 U.S.C. 57b-3, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it: (1) estimates that the amendment will have an annual effect on the national economy of \$100 million or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the rescission will not have such effects on the national economy; on the cost of labeling apparel and piece goods; or on covered parties or consumers. Accordingly, the proposed repeal of the Rule is exempt from Section 22’s preliminary regulatory analysis requirements. To ensure the accuracy of this certification, however, the Commission requests comment on the economic effects of the proposed rescission.

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<sup>110</sup> See 15 U.S.C. 57a(i)(2)(A); 16 CFR 1.18(c).

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a proposed Rule and a Final Regulatory Flexibility Analysis (“FRFA”), with the Final Rule, if any, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603-605. In the Commission’s view, the repeal should not have a significant or disproportionate impact on the costs of small entities that manufacture or import apparel or piece goods. Therefore, based on available information, the Commission certifies that repealing the Rule as proposed will not have a significant economic impact on a substantial number of small entities.

Although the Commission certifies under the RFA that the repeal would not have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that is appropriate to publish an Initial Regulatory Flexibility Analysis to inquire into the impact of the proposed repeal on small entities. Therefore, the Commission has prepared and seeks comment on the following analysis:

*A. Description of the Reasons That Action by the Agency Is Being Taken*

In response to public comments, the Commission proposes to repeal the Rule to respond to changes in technology, changed commercial practices, and updated industry standards.

*B. Statement of the Objectives of, and Legal Basis for, the Proposed Amendments*

The Commission issued the Rule pursuant to Section 18 of the FTC Act, 15 U.S.C. 57a. The proposed repeal would alleviate burden on manufacturers and importers subject to the Rule. As described above, the record suggests that the existing Rule may

no longer be necessary, has failed keep pace with a dynamic marketplace, and may have undermined the adoption of new technologies, and the proposed repeal would allow manufacturers additional flexibility in labeling garments for sale to consumers.

*C. Small Entities to Which the Proposed Amendments Will Apply*

Under the Small Business Size Standards issued by the Small Business Administration, textile apparel and some fabric manufacturers qualify as small businesses if they have 500 or fewer employees. Clothing and piece good wholesalers qualify as small businesses if they have 100 or fewer employees. Commission staff has estimated that approximately 10,744 manufacturers or importers of textile apparel are covered by the Rule's disclosure requirements.<sup>111</sup> A substantial number of these entities likely qualify as small businesses. The proposed repeal would not impose any new requirements on small businesses, and it would eliminate the information collection burdens associated with the Rule.

*D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed to Comply*

The proposed amendments would repeal the Rule and would therefore not impose any recordkeeping, reporting, or compliance requirements on any entities. Instead, the proposed repeal would eliminate the Rule's disclosure and other compliance obligations for all small entities subject to the Rule.

*E. Duplicative, Overlapping, or Conflicting Federal Rules*

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<sup>111</sup> *Federal Trade Commission: Agency Information Collection Activities; Proposed Collection; Comment Request*, 83 FR 2156 (Jan. 16, 2018).

The Commission has not identified any federal statutes, rules, or policies that duplicate, overlap, or conflict with proposed repeal of the Rule.

*F. Significant Alternatives to the Proposed Amendments*

The Commission is not aware of any significant alternatives that would further minimize the impact on small entities of the proposed repeal, but solicits comments on this approach.

**VII. Paperwork Reduction Act**

The existing Rule contains various “collection of information” (*e.g.*, disclosure) requirements for which the Commission has obtained OMB clearance under the Paperwork Reduction Act (“PRA”), 44 U.S.C. 3501 *et seq.* OMB has approved the Rule’s existing information collection requirements through May 31, 2021 (OMB Control No. 3084-013).<sup>112</sup> The proposed rule contains no collections of information under the PRA. *See* 44 U.S.C. 3502(3). Accordingly, there is no paperwork burden associated with the proposed rule. As discussed above, the Commission seeks comment on repealing the Rule and it is the Commission’s intention to rescind the associated information collection in connection with the proposed repeal. Accordingly, repeal of the Rule would eliminate the burdens imposed by the Rule’s disclosure requirements on manufacturers or importers of textile apparel.

**Proposed Regulatory Language**

**List of Subjects in 16 CFR Part 423**

Clothing, Labeling, Textiles, Trade practices.

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<sup>112</sup> *See* 83 FR 15144 (Apr. 9, 2018).

**PART 423—[REMOVED]**

For the reasons stated in the preamble, and under the authority of 15 U.S.C. 57a, the Commission proposes to remove 16 CFR part 423.

By direction of the Commission.

**April J. Tabor,**  
*Secretary.*

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